

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Harding v. The Board of Land and Works,
from the Supreme Court of the Colony of
Victoria; delivered 3rd April 1886.*

Present :

THE LORD CHANCELLOR.

LORD BLACKBURN.

LORD MONKSWELL.

LORD HOBHOUSE.

SIR RICHARD COUCH.

On the 17th of November 1883 the following issue between the Appellant and Respondent was, under a provision in the "Lands Compensation Statute, 1869," of the Colony of Victoria, tried in the Supreme Court of the colony before Higinbotham, J. :—

"Whereas Silas Harding affirms, and the Board of Land and Works denies, that the compensation to be paid by the said Board to the said Silas Harding for the piece of land in the parish of Adzar, in the county of Villiers, in the colony of Victoria, containing fifteen acres and thirty-one perches, more or less, being, &c., the property of the said Silas Harding, taken by the said Board for the construction of a line of railway from Ararat, in the said colony, to Hamilton, in the said colony, as also for the damage which has been, or may be, sustained by reason of the severing of the said land so as above taken from other lands of the said Silas Harding, and of such other lands being otherwise injuriously affected by the exercise of the powers of the Act in that case made and provided, amounts to the sum of 3,676*l.* 6*s.* 6*d.*, and it has been agreed that, in the event of the jury finding in the negative of the said issue, the amount of the said compensation shall be ascertained by a verdict of a jury, and both parties pray that the same may be inquired of by the country."

Q 9637. 100.—4/86.

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In answer to questions which were put to the jury by the learned judge, they found,—

1. That the amount of compensation payable to the Appellant for the price of the land taken, and the damage described in the issue, did not amount to 3,676*l.* 6*s.* 6*d.*

2. That the commercial or market value of the land taken was, on the 25th of February 1876, (the date of the notice to treat) 61*l.* 1*s.* 9*d.*)

3. The amount that ought to be allowed for the alleged or real compulsory taking of the land was 15*l.* 4*s.*

4. The amount payable for the Plaintiff's fence was 113*l.*

5. The amount of damage sustained by the Plaintiff in respect to other lands of his, by severance from three-chain road, was 60*l.*

6. The amount of the enhancement, in value of 1,182 acres of adjoining land of the Plaintiff, by reason of the making of the railway, was 591*l.*

Thereupon a verdict was directed to be entered for the Defendants, and leave reserved to both parties to move to enter a verdict as the Court should think proper in accordance with the findings of the jury. On the 28th of November 1883, the Supreme Court was moved on behalf of the Plaintiff to grant a rule to show cause why the verdict should not be set aside on the ground of misdirection, and also why the verdict should not be set aside, and a verdict entered for the Plaintiff for 249*l.* 5*s.* 9*d.* or 189*l.* 5*s.* 9*d.*, on the grounds that there was no evidence of any enhancement in value of the adjoining land belonging to the Plaintiff, or other benefit or advantage which he obtained by reason of the making of the works or undertaking, within the meaning of the 35th section of the Lands Compensation Statute, 1869, or that, if there was evidence of such enhancement in value, the

amount thereof should not be taken into consideration by the jury, except in reduction of the amount of the damage sustained by the Plaintiff by reason of the severing of the lands taken from his other lands. The Court refused to grant a rule to set aside the verdict on the ground of misdirection, but granted a rule to set it aside and enter a verdict for the Plaintiff. This rule was discharged by the Court on the 18th December 1883. The present appeal is from the refusal to grant the former rule and the order discharging the latter.

The misdirection complained of was that the Judge told the jury that it was open to them to consider, as affecting the Plaintiff's credit, whether he had not obtained the Devon Park estate, of which the severed allotments formed part, by illegal means, and, in connection therewith, whether he had not been guilty of employing persons to make false declarations, if not to commit perjury, and that he told the jury that it was open to them to consider the Plaintiff's act in illegally closing roads in the Devon Park estate as affecting his evidence in regard to the value of the allotments. The charge to the jury is stated in the Record of Proceedings, and their Lordships are of opinion that there was no misdirection.

The important question is whether the enhancement in value of the adjoining land is to be considered in reduction of the whole compensation to be paid by the Respondents, including both the value of the land taken and the damage by reason of severance from other lands, or of the compensation for the latter only. There was evidence to support the finding of the jury as to the enhancement in value, and, subject to the second question afterwards noticed, that finding will stand. Therefore, if the former part of the first question is answered in the affirmative, the

verdict for the Defendants will stand ; if the latter part is so answered the verdict should be entered for the Plaintiff for 185*l.* 5*s.* 9*d.*, the 60*l.* damage for severance being deducted from 249*l.* 5*s.* 9*d.*, the total of the value of the land and damage.

The 35th section of the Lands Compensation Statute, 1869, is as follows :—

“ In estimating the purchase money or compensation to be paid by the Board in any case, regard shall be had by the magistrates, surveyors, valutors, or jury, as the case may be, not only to the value of the land to be purchased or taken by the Board, but also to the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, and they shall assess the same accordingly to what they shall find to have been the value of such lands, estate, or interest, at the time notice was given of such lands being required for the works or the undertaking, and the said magistrates, arbitrators, surveyors, valutors, and jury, in assessing such compensation, are authorized and empowered, and shall take into consideration the enhancement in value of the adjoining land belonging to the person to whom compensation is to be made, or any other benefit or advantage which such person may or shall obtain by reason of the making of such works or undertaking in reduction of such compensation.”

Their Lordships have had great difficulty in coming to a conclusion as to what was the intention of the Legislature in the latter part of this section. They cannot agree with the Chief Justice of the Supreme Court, when he says that the policy of the last part of the section is obviously to enable the Government, in the construction of railways or other expensive works, to recover, by way of set-off to the compensation for lands taken or injuriously affected, a deduction for benefits resulting to the landowner from the formation of the particular work. He does not seem to have considered that there would be lands adjacent to the railway which would be enhanced in value by the making of it, but no part of which might be taken by the Board. The owners of these might be equally

benefited with the owners of lands taken, or even more so, and would lose nothing, whilst the latter might lose the whole value of their land that was taken. If this was the intention, it might have been clearly expressed.

The words "purchase money," and the words "value of the land to be purchased or "taken," in the first part of the section, appear to show that the taking of the land was to be regarded as a purchase by the Board, and if it was intended that the enhancement in value of the other land was to be set off against the price or value of the land taken, their Lordships think it would have been expressed by repeating the word purchase money in the latter part of the section. In the part of the section which immediately precedes it is enacted that "they shall assess the same accordingly to what they shall find to have been the value of such lands, estate, or interest, at the time notice was given," &c. Now the words "the same" must either mean the "value of such lands, estate, or interest," or "the purchase money or compensation." In either view the use of the word "compensation" alone in the concluding part of the section is significant, and compensation may there have been used as meaning compensation for damage, in which sense it is used in the 32nd section. The former part of Section 35 was probably taken from Section 63 of the English Lands Clauses Act, 8 & 9 Vict., c. 18, and in Section 49 of that Act a distinction is plainly made between the money to be paid for the purchase of the lands and the money to be paid by way of compensation for damages.

It appears to their Lordships that it would be a reasonable construction of the 35th section that, where an owner is entitled to compensation for damage to his lands by reason of severance

from them of the land taken or the lands being otherwise injuriously affected, and there is an enhancement in value of his adjoining land, the one should be set off against the other. They think this was the intention of the Legislature, although, from the use of the word "such" before "compensation," in the latter part of the section, it may not be the literal interpretation of it.

The second question is, what is the meaning of the words "by reason of the making of such works or undertaking"? The Plaintiff contended that the benefit or advantage referred to was to be confined to that arising from the making only of the railway, and not from the user of it. It is difficult to see what is the meaning of the words "any other benefit or advantage," but it is not necessary now to determine that. Any meaning which they can reasonably have would not alter that of the words which follow. Their Lordships are of opinion that "works or undertaking" as there used include works in operation, and a going concern, and that the enhancement in value may arise from the use as well as the construction of the railway.

The result is that their Lordships will humbly advise Her Majesty to reverse the order of the Supreme Court, and to order that a verdict be entered for the Plaintiff for 189*l.* 5*s.* 9*d.* They make no order as to the costs of this appeal.
